

OFFICIAL TRANSCRIPT OF PROCEEDINGS BEFORE THE POSTAL RATE COMMISSION

In the Matter of:)
)
POSTAL RATE AND FEE CHANGES) Docket No. R2005-1

RECEIVED

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POSTAL RATE COMMISSION

In the Matter of:)
)
POSTAL RATE AND FEE CHANGES) Docket No. R2005-1

Room 300
Postal Rate Commission
1333 H Street, N.W.
Washington, D.C.

Thursday, May 5, 2005

The above-entitled matter came on for hearing pursuant to notice, at 10:02 a.m.

BEFORE :

HON. GEORGE A. OMAS, CHAIRMAN
HON. TONY A. HAMMOND, VICE CHAIRMAN
HON. RUTH Y. GOLDWAY, COMMISSIONER
HON. DANA B. COVINGTON, COMMISSIONER
HON. DAWN A. TISDALE, COMMISSIONER

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P R O C E E D I N G S

(10:02 a.m.)

CHAIRMAN OMAS: Good morning. It looks as though we have a full house, but before I begin my formal statement today, I would like to tell you, it's a long statement, so please bear with me. This is a prehearing conference, and we're going to try and set the ground work for proceeding with this case. So, you know, I don't have the best voice, so just bear with me. Okay? Thank you.

Good morning. This is the first prehearing conference in the Docket R-2005-1 considering the request of the United States Postal Service for rate and fee changes.

I am George Omas, chairman of the Postal Rate Commission. With me are Vice Chairman Tony Hammond, Commissioners Dana Covington, Ruth Goldway, and Don Tisdale.

I see many familiar faces this morning. In fact, we have a full house in the hearing room today, but I will take a minute to mention a few standing Commission practices.

Hearings for the receipt of evidence begin promptly at 9:30 a.m. We normally go about an hour and a half between breaks. Each day, we expect to

1 complete the appearance of all scheduled witnesses.
2 Therefore, if necessary, hearings may extend into the
3 evening. Our hearings are available via real-time Web
4 streaming from our Web site, www.prc.gov, so counsel
5 can follow hearing progress.

6 We also maintain a telephone message that
7 indicates what witnesses are scheduled to appear.
8 That message is updated periodically on days when
9 hearings are in session and as an alternative way to
10 assist counsel to estimate when testimony of
11 particular interests is likely to be received.

12 The reporter in this case is Heritage
13 Reporting Company. There are forms for noting
14 appearances available on the table as you enter the
15 hearing room. If you wish to purchase transcripts,
16 you should see the reporter after today's conference
17 or call (202) 628-4888. Copies of transcripts are
18 also available for review at the Commission's docket
19 section. Transcripts will appear on the Commission's
20 Web site several days after a hearing takes place.

21 At this point, I would like to ask counsel
22 to identify themselves for the record. Advo, Inc.

23 MR. McLAUGHLIN: Mr. Chairman, Tom
24 McLaughlin on behalf of Advo. Appearing with me would
25 also be John Burzio. I would also like to note that

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1 the Saturation Mail Coalition will be filing a late-
2 filed petition, and I will be representing them as
3 well. Thank you.

4 CHAIRMAN OMAS: Thank you. Alliance of
5 Nonprofit Mailers.

6 (No response.)

7 CHAIRMAN OMAS: American Bankers
8 Association.

9 MR. WARDEN: Mr. Chairman, Irv Warden
10 appearing for the American Bankers Association.

11 CHAIRMAN OMAS: Thank you. American Postal
12 Workers Union.

13 MR. ANDERSON: Darrell Anderson appearing
14 for American Postal Workers Union.

15 CHAIRMAN OMAS: Thank you. Association for
16 Postal Commerce.

17 MR. VOLNER: Ian Volner. Good morning, Mr.
18 Chairman. Ian Volner, with Rita Brickman and Matthew
19 Field, appearing for the Association for Postal
20 Commerce.

21 CHAIRMAN OMAS: Thank you.

22 MR. VOLNER: Do you want to do the others
23 now, or would you rather do them in order?

24 CHAIRMAN OMAS: Well, I think we should do
25 them in order for purposes of that.

1 MR. VOLNER: Okay.

2 CHAIRMAN OMAS: Thank you, Ian.

3 Association of Alternative Postal Systems.

4 MR. STRAUS: Your Honor, I would like to
5 enter the appearance of Bonnie Blair, with Thompson
6 Coburn, LLP. She couldn't make it today, and I'm with
7 the same firm, and she asked me to enter her
8 appearance for AAPS.

9 CHAIRMAN OMAS: Thank you.

10 MR. STRAUS: Mr. Chairman, I see that you
11 skipped over American Business Media in your
12 alphabetical list.

13 CHAIRMAN OMAS: You're next. Oh, I did.
14 I'm sorry, Mr. Straus. American Business Media.

15 MR. STRAUS: Once again, David Straus for
16 American Business Media.

17 CHAIRMAN OMAS: If I make that mistake,
18 please correct me. I'm sorry.

19 Association of American Publishers.

20 MR. PRZYPYSZNY: Good morning, Mr. Chairman.
21 John Przepyszny appearing on behalf of the Association
22 of American Publishers.

23 CHAIRMAN OMAS: Bantam Corporation.

24 (No response.)

25 CHAIRMAN OMAS: Douglas F. Carlson.

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1 (No response.)

2 CHAIRMAN OMAS: Digistamp, Inc.

3 (No response.)

4 CHAIRMAN OMAS: DMA Nonprofit Federation.

5 MS. BOONE: Good morning, Mr. Chairman.

6 Senny Boone appearing on behalf of the DMA Nonprofit
7 Federation.

8 CHAIRMAN OMAS: Direct Marketing
9 Association, Inc.

10 MR. ACKERLY: Good morning, Mr. Chairman.
11 Tod Ackerly appearing on behalf of DMA.

12 CHAIRMAN OMAS: Discover Financial Services,
13 Inc.

14 MR. BRINKMANN: Mr. Chairman, members of the
15 Commission, Robert Brinkmann on behalf of Discover
16 Financial Services, Inc.

17 CHAIRMAN OMAS: Thank you.

18 Dow Jones & Company, Inc.

19 MR. McBRIDE: Good morning, Mr. Chairman and
20 members of the Commission. Michael F. McBride for Dow
21 Jones & Company, Inc.

22 CHAIRMAN OMAS: Thank you, Mr. McBride.

23 Greeting Card Association.

24 MR. SWENDIMAN: Good morning, Mr. Chairman.

25 Alan Swendiman, along with David Stover, appearing on

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1 behalf of the Greeting Card Association.

2 CHAIRMAN OMAS: Thank you.

3 The Hearst Corporation.

4 (No response.)

5 CHAIRMAN OMAS: Institute for Research on
6 the Economics of Taxation.

7 (No response.)

8 CHAIRMAN OMAS: Magazine Publishers of
9 America, Inc.

10 MR. MYERS: Good morning, Mr. Chairman and
11 members of the Commission. Pierce Myers on behalf of
12 the Magazine Publishers of America, Inc.

13 CHAIRMAN OMAS: Thank you.

14 Mail Order Association of America.

15 MR. TODD: Good morning. David Todd
16 appearing for Mail Order Association of America.

17 CHAIRMAN OMAS: Thank you, Mr. Todd.

18 Mailing and Fulfillment Services
19 Association.

20 MR. VOLNER: Good morning again, Mr.
21 Chairman. Ian Volner, with Rita Brickman and Matt
22 Field, appearing on behalf of the Mailing Order
23 Fulfillment Association.

24 CHAIRMAN OMAS: Thank you, Mr. Volner.

25 Major Mailers Association.

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1 MR. HALL: Good morning, Mr. Chairman.

2 Michael Hall on behalf of Major Mailers Association.

3 CHAIRMAN OMAS: Thank you.

4 The McGraw Hill Companies, Inc.

5 (No response.)

6 CHAIRMAN OMAS: The National Association of
7 Letter Carriers.

8 (No response.)

9 CHAIRMAN OMAS: The National Association of
10 Postmasters of the United States.

11 (No response.)

12 CHAIRMAN OMAS: The National Association of
13 Presort Mailers.

14 MR. HART: Good morning, Mr. Chairman and
15 Commissioners. Henry Hart appearing on behalf of the
16 National Association of Presort Mailers.

17 CHAIRMAN OMAS: Thank you.

18 National Newspaper Association.

19 MS. RUSH: Mr. Chairman, members of the
20 Commission, good morning. Tonda Rush for National
21 Newspaper Association.

22 CHAIRMAN OMAS: Thank you.

23 National Postal Mail Handlers Union.

24 MR. SLART: Good morning, Mr. Chairman.

25 Bruce Slart on behalf of the National Postal Mail

1 Handlers Union.

2 CHAIRMAN OMAS: Thank you.

3 National Postal Policy Council.

4 (No response.)

5 CHAIRMAN OMAS: Newspaper Association of
6 America.

7 MR. BAKER: Good morning, Mr. Chairman and
8 members of the Commission. Bill Baker appearing on
9 behalf of the Newspaper Association of America.

10 CHAIRMAN OMAS: Office of the Consumer
11 Advocate.

12 MS. DREIFUSS: Good morning. I'm Shelley
13 Dreifuss. With me today are Rand Costich and Ken
14 Richardson appearing on behalf of OCA.

15 CHAIRMAN OMAS: Thank you.

16 Parcel Shippers Association.

17 MR. MAY: Good morning. Tim May appearing
18 on behalf of the Parcel Shippers Association.

19 CHAIRMAN OMAS: Pitney Bowes, Inc.

20 MR. LONGSTRETH: Good morning, Mr. Chairman
21 and members of the Commission. John Longstreth, along
22 with Michael Scanlon, appearing for Pitney Bowes.

23 CHAIRMAN OMAS: Thank you.

24 David B. Popkin.

25 (No response.)

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1 CHAIRMAN OMAS: R.R. Donnelly & Sons
2 Company.

3 MR. VOLNER: Good morning for the third and
4 last time, I think, Mr. Chairman. Ian Volner, Rita
5 Brickman, and Matt Field appearing on behalf of R.R.
6 Donnelly & Sons.

7 CHAIRMAN OMAS: Thank you, Mr. Volner, and
8 thank you for doing that.

9 Time Warner, Inc.

10 MR. KEEGAN: Good morning, Mr. Chairman and
11 members of the Commission. Timothy Keegan, appearing
12 with John M. Burzio, on behalf of Time Warner.

13 CHAIRMAN OMAS: Thank you.

14 United Parcel Service.

15 MS. BIANCKE: Good morning, Mr. Chairman and
16 members of the Commission. Laura Biancke on behalf of
17 United Parcel Service. Also appearing will be John
18 McKeever. Thank you.

19 CHAIRMAN OMAS: Val-Pak Dealers Association,
20 Inc., and Val-Pak Direct Marketing Systems, Inc.

21 MR. OLSON: Mr. Chairman, William Olson,
22 John Miles, and Jeremiah Morgan appearing on behalf of
23 Val-Pak and its dealers association.

24 CHAIRMAN OMAS: Thank you, Mr. Olson.

25 Is there anyone I have missed? I'm sorry.

1 I was going to get to you. I know that I missed you,
2 and, believe me, that was an accident. It was not
3 intentional.

4 (Laughter.)

5 CHAIRMAN OMAS: Would you please introduce
6 yourself for the record, Mr. Foucheaux?

7 MR. FOUCHEAUX: Thank you, Mr. Chairman.
8 Dan Foucheaux for the Postal Service. With me at the
9 table are Mr. Koetting and Mr. Rubin. I won't
10 introduce all of our other attorneys individually,
11 except that we have two relatively new attorneys
12 appearing in a rate case for the first time, and I
13 would like to ask them to stand, Sheela Portonovo and
14 Keith Weidner, and you will be seeing some great
15 things from them in the future.

16 CHAIRMAN OMAS: Thank you, and I apologize.

17 Yes, sir?

18 MR. SACKLER: Good morning, Mr. Chairman and
19 members of the Commission. My name is Art Sackler,
20 and I am here on behalf of the National Postal Policy
21 Council.

22 CHAIRMAN OMAS: Thank you.

23 Notwithstanding -- oh, we have another one?
24 Sorry. Mr. Levy.

25 MR. LEVY: Good morning, Mr. Chairman and

1 members of the Commission. David Levy for the
2 Alliance of Nonprofit Mailers. Thanks.

3 CHAIRMAN OMAS: Thank you.

4 Notwithstanding these introductions for the
5 record, I ask that during the hearings, counsel
6 identify themselves for the reporter each time before
7 speaking.

8 One notice of intervention was received
9 late. I granted that motion for late intervention of
10 the Hearst Corporation.

11 The Postal Service indicated its views that
12 this request is significantly less complex than
13 previous omnibus rate cases. Its filing does not
14 include any classification change proposals, and it
15 seeks new revenues sufficient only to meet an escrow
16 requirement imposed by Congress in legislation
17 approximately two years ago, Public Law 108-18.

18 For these reasons, it has stated that it
19 believes it may be possible for interested parties to
20 settle this case.

21 The Commission has a longstanding policy in
22 favor of settling issues whenever possible, and the
23 Commission agreed to make this hearing room available
24 for a settlement conference today, starting 20 minutes
25 after this prehearing conference is completed.

1 Commissioners and advisory staff will not
2 attend the settlement conferences, but I encourage all
3 participants to attend.

4 The primary topic for discussion today
5 relates to how we will schedule this case in order to
6 provide due process while achieving the maximum
7 expedition possible. However, to a large extent,
8 scheduling will be dependent on what progress the
9 parties make toward resolving some or all of the
10 issues raised by the Postal Service request.

11 I recognize that settlement negotiations
12 will almost certainly be ongoing over a number of
13 weeks. Nonetheless, the settlement conference later
14 this morning should provide some indication of whether
15 settlement of some or all of the issues is likely.

16 Therefore, Postal Service counsel is
17 requested to file a settlement progress report by the
18 close of business, Tuesday, May 10th. I would like
19 that report to mention three things.

20 First, if participants raise such a broad
21 spectrum of concern that settlement seems unlikely, I
22 would like to be informed.

23 Second, if it appears that there are some
24 issues that may be ripe for quick settlement, thereby
25 narrowing the focus of this case, I would like to be

1 informed. For example, Parcel Shippers Association
2 filed comments indicating that it would not raise
3 classification issues. If participants can agree to
4 exclude classification issues, this information will
5 be of help in estimating the days of hearings
6 required.

7 Third, if settlement continues to appear to
8 be viable, please indicate whether settlement may be
9 possible prior to the cross-examination of postal
10 witnesses.

11 The key issue for scheduling subsequent
12 procedural steps in this case appears to be the
13 appropriate amount of time to allow for discovery of
14 the Postal Service. Several parties have addressed
15 this issue in comments filed on May 2nd. I intend to
16 ask counsel for comments to supplement their written
17 pleadings, but, first, I want to clarify Commission
18 practice.

19 Discovery on the Postal Service is
20 permissible during two separate periods after
21 intervening participants are free to pose discovery
22 concerning the Postal Service's direct case and to
23 obtain information necessary to develop their own
24 direct testimony. Later in the case, they are also
25 free to pose discovery to obtain information allowing

1 them to present evidence in rebuttal to other
2 participants.

3 I would like counsel to address how much
4 time is needed for discovery concerning that first
5 primary stage of discovery. The Postal Service has
6 suggested that discovery might end May 27th. OCA,
7 however, on the other hand, suggests the date of July
8 1. In any case, I want it clear that if a settlement
9 of all of the issues can be agreed to and testimony
10 responsive to the Postal Service's request is
11 submitted, participants will be allowed to file
12 discovery on the Postal Service for the purpose of
13 developing evidence in rebuttal to other participants.

14 There is one other point I want participants
15 to have in mind. I realize that if there is a
16 settlement, participants may want to expend
17 significant resources on discovery. However, the
18 Commission takes its obligation to expedite this case
19 very seriously. The Commission will not extend
20 discovery for an significant period of time simply
21 because participants failed to successfully negotiate
22 a settlement. Please have that in mind.

23 Now, Ms. Dreifuss, OCA counsel, I would like
24 you to be first. Would you please discuss in a little
25 more detail the nature of the issues you intend to

1 pursue during discovery and why you think you need
2 another eight weeks to do so?

3 MS. DREIFUSS: Our position is that we want
4 to explore fully -- let me start out with the most
5 important discovery for OCA.

6 The Postal Service has presented a brand-new
7 study on city carrier delivery costs. OCA made
8 attempts to get information about that study, as did
9 the Commission, prior to the filing of this case. The
10 Postal Service stonewalled those efforts and would not
11 provide any information. Therefore, OCA needs to make
12 full use of discovery in this case to understand what
13 Dr. Bradley did and to develop alternatives, if we
14 believe that they are appropriate. In addition to
15 that, the Postal Service has filed a new approach for
16 mail-processing cost variability.

17 Now, OCA doesn't need to litigate all of the
18 changes to that testimony fully because some of them
19 adopt techniques that were recommended by an OCA
20 consultant, Professor Mark Roberts. However, there
21 are still points of disagreement between Professor
22 Roberts and Dr. Bazo, and we need to explore those
23 fully, and we may want to present an alternative study
24 of volume variability in this proceeding.

25 Now, once we do finally reach a

1 determination of what we think the volume
2 variabilities are for city delivery and mail
3 processing, we then have to have another close look at
4 the cost coverages that result from what we believe to
5 be the correct attributable costs for the classes of
6 mail. The cost-coverage assessment must follow
7 correct attribution; and, therefore, we need time to
8 move step by step toward our final conclusion.

9 CHAIRMAN OMAS: Thank you.

10 Several of the participants expressed
11 concern with the shorter-than-normal discovery period
12 subjected by the Postal Service. Mr. Hart and Mr.
13 Warden, counsel for the National Association of
14 Presort Mailers and the American Bankers Association;
15 would either of you like to expand on how much time
16 you think would be necessary to allow for adequate
17 discovery?

18 MR. HART: Thank you, Mr. Chairman. Henry
19 Hart representing the National Association of Presort
20 Mailers. I had a five-second conference with Mr.
21 Warden, representing the American Bankers Association.

22 We didn't, as you know, request a specific
23 time. We were concerned with the May 27th suggestion
24 of the Postal Service. We are open to settlement of
25 this case. Our concern is that the record adequate

1 support the proposed discounts of first-class letter
2 mail, and the cost studies from the preliminary
3 analysis that our witnesses have been able to make our
4 complicated, and we need to understand precisely the
5 basis for the cost studies that have been placed in by
6 the Postal Service and also the delivery cost study
7 that was mentioned by the OCA.

8 In terms of time, June 15 was a suggestion.
9 That's the best I can do, I guess, on a specific
10 request.

11 CHAIRMAN OMAS: Thank you, Mr. Hart.

12 Next, I would like to ask counsel for the
13 American Postal Workers Union, AFL-CIO, to address
14 this issue.

15 MR. ANDERSON: Good morning. The American
16 Postal Workers Union has its own concerns about the
17 shortness of May 27th. If July 1st would be workable
18 and still permit a settlement of this case, then we
19 think July 1st is a more realistic date. We have
20 concerns about the volume-variability issue, and the
21 Commission is well aware, as are others in this room,
22 of the concerns of the American Postal Workers Union
23 with regard to some of the cost justifications for
24 discounts, and all of those issues require discovery,
25 as far as we're concerned, at this point. We are not

1 opposed to settlement if it can be reached, although
2 we're reserving our right to object on that.

3 So, with that reservation, May 27th is
4 certainly too short; July 1st may be more realistic.

5 CHAIRMAN OMAS: Thank you.

6 Val-Pak and Major Mailers are two parties
7 that have already submitted a fairly substantial
8 amount of discovery. Does counsel of either of these
9 parties have anything to add at this time?

10 MR. HALL: Mike Hall for Major Mailers. Let
11 me say that we put in our comments to you a suggestion
12 that May 12 be a date when people would indicate their
13 willingness to settle. If they weren't willing to
14 settle, to identify issues that they would intend to
15 object to the settlement based upon and any material
16 facts that they would have to address at a trial.

17 We think, in setting the schedule, that it's
18 important to figure out what kind of animal we're
19 dealing with. If we're only dealing with a few
20 issues, that's much different than if we don't have
21 any settlement at all.

22 So I think the focus ought to be, first, on
23 determining what sort of groundswell we have, and your
24 suggestion that Mr. Foucheaux report to you on May
25 10th, I think, would probably satisfy our concern, as

1 long as that report also identifies issues and
2 possible objections.

3 In terms of discovery, yes, we have already
4 propounded numerous interrogatories, and we have many
5 more to go. We do have problems with the delivery
6 cost study that the OCA and Mr. Hart mentioned, and
7 also, we do have a problem with the disconnect between
8 cost savings and discount rate levels for first-class
9 mail, and those are issues that we want to make sure
10 that you have adequate support for if there is a
11 settlement.

12 CHAIRMAN OMAS: Thank you, Mr. Hall.

13 Mr. Olson?

14 MR. OLSON: Thank you, Mr. Chairman. Val-
15 Pak has no position on settlement yet at this point,
16 but we do believe that discovery ought to be allowed
17 to continue in a fairly robust way. We've had eight
18 sets of interrogatories that I believe we've filed
19 thus far dealing with some of the issues the other
20 parties have identified and others that are unique to
21 ECR, which is given the highest cost coverage of any
22 postal product in this case, of 244 percent, that
23 we're exploring, as well as the formula for setting
24 nonprofit rates for nonprofit ECR and ECR, which we
25 believe may be contrary to law and want to explore the

1 factual development of those rates that are being
2 proposed.

3 We also note, as we did in our comments,
4 that the Postal Service is proposing a schedule for
5 this docket that's even shorter than the extraordinary
6 circumstances of our 2001-1, which we don't believe to
7 be justified.

8 And, lastly, as we quote in our comments
9 from the Postal Service, their arguments in favor of a
10 very expedited schedule in this case; they say that
11 they believe that the Commission's procedures and
12 schedule should be used to facilitate speedy
13 settlement, and we don't believe that really to be a
14 legitimate purpose of the Commission's scheduling. We
15 think that settlement may or may not occur, but the
16 Commission should not schedule the case so as to
17 either encourage or incentivize or even -- well,
18 encourage people to have to settle the case. We
19 believe the facts of the case ought to come out.

20 CHAIRMAN OMAS: Thank you, Mr. Olson.

21 Does anyone else have any comments to add at
22 this point regarding discovery time.

23 (No response.)

24 CHAIRMAN OMAS: Thank you. I will take
25 these comments under advisement. Also, I will allow

1 participants to file --

2 MR. FOUCHEAUX: Mr. Chairman, I'm sorry. I
3 thought you were going to get to me.

4 CHAIRMAN OMAS: Oh, Mr. Foucheaux. I keep
5 forgetting you today. I'm sorry.

6 MR. FOUCHEAUX: I do have a few comments
7 which, I think, should be helpful.

8 First, let me say that I surprised myself a
9 couple of days ago when I realized, in making a
10 notation about how much time I asked for originally, I
11 had miscalculated and had actually asked for less time
12 than I had assumed I had. We asked for a May 27th
13 deadline for discovery, which, I think, is about seven
14 weeks. I will note that the last case is kind of hard
15 to analyze, even though it was a settlement case,
16 because there was cross-examination in two stages, and
17 there were actually two discovery deadlines. But
18 looking at other A cases, the historical average for
19 discovery against the Postal Service is about 65 days.
20 I think, in our 2000, we took a little more time than
21 that.

22 I understand the interest in having a
23 reasonable period of discovery. The Postal Service
24 certainly does not object to that. In fact, in all of
25 our discussions with parties prior to filing this

1 case, we tried to reassure those that might have had
2 reservations about settlement that the Postal Service
3 would not object to a reasonable discovery period.

4 We think it's important for the integrity of
5 the case. We think it's important for the Commission
6 that there be a sound evidentiary record, even though
7 many of the questions we have received so far have
8 been addressed to testimony that the Postal Service
9 really does not rely on to support its rate proposals.

10 As we all know, our rate proposals are
11 fairly simplistic. We have not made any
12 classification or rate structure proposals, and the
13 across-the-board approach doesn't render meaningless
14 but certainly renders the costing testimony of
15 secondary importance compared to other cases.

16 Having said all of that, we understand that
17 there are some important costing issues that if this
18 case should not proceed the way we would like it to
19 proceed, might be important, and we certainly have no
20 objections to parties having a full and fair
21 opportunity to explore those. In that regard, I will
22 point out that we have made offers repeatedly to
23 parties whom we have talked to so far to try to settle
24 some of these issues, to try to provide information
25 informally if that will speed up the process.

1 Obviously, expedition is an integral part of the
2 Postal Service case in this instance, which will be
3 really apparent if you read the postmaster general's
4 testimony.

5 Nevertheless, we still think that we should
6 try to expedite as much as possible. But in light of
7 the historical average and in light of the issues
8 raised, the Postal Service would not object to an
9 additional two weeks of discovery against it. That
10 would take us to June 10th. That would be 63 days
11 after the filing, which I think would be consistent
12 with the historical average. I do believe, however,
13 that July 1st is unreasonable, from the Postal
14 Service's standpoint, and would strongly object to a
15 July 1st concluding date for discovery.

16 In spite of what Mr. Olson said about
17 settlement, I will remind the parties that in the last
18 case, for very good reason, and I admit, under very
19 different circumstances, the Commission took the lead
20 in promoting settlement, and it is well within the
21 Commission's purview to do that in any case,
22 particularly when the Commission recognizes the
23 limitation of issues that the case presents, as well
24 as the importance of expedition to the overall result
25 that the Postal Service is seeking. Therefore, I

1 think it is entirely appropriate for the Commission to
2 adopt a schedule that facilitates settlement, if not
3 promote it, in this instance or any other.

4 In that regard, I think, as many parties
5 have already pointed out in their written pleadings,
6 there are a lot of things about the schedule that we
7 really need not take firm positions on at this time.
8 I think, as we've pointed out in our request for
9 expedition, we are starting this case much farther
10 ahead in the settlement process than we did in the
11 last case.

12 I think there is a strong expectation that
13 we could settle this case, and we may know more about
14 that today, and maybe it appears less likely today
15 than it did when I filed the request for expedition.
16 Nevertheless, I think it is a serious possibility, and
17 I think it's one we should strive for for everybody's
18 benefit, particularly the parties that are willing to
19 agree that the Postal Service's proposal is moderate
20 and reasonable and something the Commission should
21 recommend.

22 Having said all of that, if you have any
23 questions about our position, I would be happy to
24 answer them, but I do think an extra two weeks in the
25 discovery period would be more than adequate, with

1 everything else I said about our willingness to
2 cooperate in trying to answer legitimate questions
3 that have something important to bear on the outcome
4 of this case. Thank you.

5 CHAIRMAN OMAS: Thank you, Mr. Foucheaux.

6 I will take these and the other comments
7 under advisement. Also, I will allow participants to
8 file additional statements concerning the need for
9 discovery following the settlement report we are
10 expecting on May 10th. This will allow participants
11 to take into account whether settlement seems more or
12 less likely.

13 I would like any additional comments on how
14 much time parties need for discovery to be filed one
15 week from today, May 12, 2005.

16 In Docket No. R-2001-1, the Commission was
17 able to facilitate matters by ending discovery on a
18 number of Postal Service witnesses early in the case.
19 This enabled us to schedule the appearance of these
20 witnesses at the beginning of hearings and extend
21 discovery on other witnesses. There may be particular
22 topics on which extended discovery may be necessary,
23 such as one of the new Postal Service cost studies.
24 If that is the case, I would like participants to
25 identify those topics. This might enable us to end

1 discovery on part of the Postal Service's case and to
2 begin evidentiary hearings at an earlier date, while
3 providing due process to the parties exploring
4 particularly complex and controversial issues. Again,
5 these statements are due by May 12th.

6 Next, I want to make everyone aware of
7 several matters now in order to avoid possible
8 problems later in the case. You may have heard rumors
9 that the Commission is planning on moving its offices.
10 Those rumors are correct. Our lease expires here at
11 the end of August, and we could not negotiate a new
12 lease at a reasonable rent. Therefore, we have
13 obtained new space. None of us are particularly happy
14 at the prospect of moving. On the other hand, it
15 appears that our new offices will have far better
16 amenities, such as reliable heating, cooling, and
17 electricity.

18 (Laughter.)

19 CHAIRMAN OMAS: We expect that everyone will
20 benefit, being in a more modern facility. Our new
21 office will be located at 901 New York Avenue, two
22 blocks away, on the second floor. We are planning on
23 moving at the end of August. Hopefully, hearings will
24 be finished by that time. If documents are still
25 being filed with the Commission, we will make

1 arrangements to assure access to electronic filing.

2 As the date approaches, we will take
3 whatever steps are necessary to fulfill our
4 responsibility, regardless of procedural status of
5 this case. I will keep you informed well in advance
6 of any adjustment that we may need to make to our
7 normal practice.

8 Yesterday, I granted a Postal Service motion
9 to submit material subject to protective conditions.
10 The Commission would rather avoid protective
11 conditions whenever possible, but we do recognize that
12 in some instances they are necessary. It is very
13 important that when documents are submitted subject to
14 protective conditions, the Commission's procedures
15 assure that the sensitive material involved is
16 completely and totally protected. Therefore, I intend
17 to adopt procedural requirements for the materials
18 submitted subject to protective conditions.

19 My current thinking is that, one, materials
20 subject to protective conditions should not be filed
21 on line. All such material should be provided to our
22 docket section in hard-copy form. If the information
23 is in electronic form, an appropriate, tangible media
24 should be provided; that is, such as a CD, tape, disk,
25 et cetera.

1 Number two: Tangible materials subject to
2 protective conditions, whether paper or electronic,
3 should be provided in a sealed envelope marked
4 "confidential." Do not post on the Web. There should
5 be a statement on the envelope relating that
6 confidential material to a notice of filing submitted
7 through our filing-on-line system.

8 Number three: The electronic notice
9 indicating that confidential material is being filed
10 with the Commission should include, at the end of the
11 title, the words, "protected material." It will be
12 particularly helpful in formatting the title of such a
13 document that the words "protected material" appear by
14 themselves as the last line of that title.

15 I would like to issue a presiding officer's
16 ruling on this topic later today. Does any
17 participant have comments on this topic? Mr.
18 Foucheaux?

19 MR. FOUCHEAUX: Those sound like reasonable
20 conditions to us.

21 CHAIRMAN OMAS: Mr. Volner?

22 MR. VOLNER: I assume that the order will
23 also impose restrictions on who may see material
24 submitted under seal.

25 CHAIRMAN OMAS: That's correct.

1 MR. VOLNER: Thank you.

2 CHAIRMAN OMAS: Any other comments?

3 (No response.)

4 CHAIRMAN OMAS: Since the very first
5 Commission rate case in 1971, we have followed the
6 practice of transcribing all direct testimony except
7 for that provided by the Postal Service. Our rules
8 require that the Postal Service provide all
9 intervenors with copies of its requests, including its
10 direct testimony. In the early days of the
11 Commission, participants did not always provide every
12 other participant with hard copies of testimony.
13 Therefore, it was necessary to collect testimony in
14 the transcript.

15 Now that the Commission uses electronic
16 filing, and all testimony is readily available on the
17 Commission's Web site, it will no longer be necessary
18 to transcribe testimony. On the other hand, we
19 transcribe written and oral cross-examination that
20 clarifies and explains prefiled testimony. It may
21 well be that counsel finds it convenient to have
22 testimony transcribed in the same place as the related
23 cross-examination.

24 Would anyone like to comment on whether we
25 should: (a) transcribe all testimony, (b) transcribe

1 all testimony except that of the Postal Service, or
2 (c) no longer transcript prefiled testimony? Mr.
3 Straus?

4 MR. STRAUS: I have a very pragmatic
5 question. What's the transcript-page charge in this
6 case?

7 CHAIRMAN OMAS: I have no idea.

8 MR. STRAUS: Back in the five-cent days, it
9 made sense to transcribe it, but as I recall, in the
10 last case, it was some multiple of that, and I know at
11 other agencies it's as much as \$2 a page. That ought
12 to be a consideration, I think.

13 CHAIRMAN OMAS: All right. Thank you.

14 I'll need to make a decision on this issue
15 before the beginning of hearings in this case, and I
16 would ask you all to consider the question and provide
17 comments within two weeks, and that would be by May
18 19, 2005. If you have any comments, we would
19 appreciate your submitting them.

20 I would like to mention that the
21 Commission -- oh, Mr. Foucheaux. I'm not doing very
22 well with you.

23 MR. FOCHEAUX: I was willing to submit this
24 in writing, but --

25 CHAIRMAN OMAS: Mr. Foucheaux, can I

1 interrupt for a minute? It's really not you; it's the
2 screen. When I look around, I don't see you, and,
3 hopefully, in the new quarters, the screens will be
4 submerged, and I'll have a direct view of you.

5 MR. FOUCHEAUX: I'm perfectly happy to be
6 overlooked in most instances.

7 (Laughter.)

8 MR. FOUCHEAUX: I'll have one comment. We
9 may supplement it in written comments. My reaction is
10 that that sounds like a reasonable approach. However,
11 when you get in the Court of Appeals, sometimes it's
12 useful to have a transcript cite to testimony, and as
13 long as there is some other way of identifying these
14 in the official record, then it probably would not be
15 a problem to eliminate transcribing other parties'
16 testimony. Obviously, we haven't done it for the
17 Postal Service, but just noting that in the Court of
18 Appeals sometimes it's useful to have just the
19 transcript cite when you're writing your brief.

20 CHAIRMAN OMAS: Thank you, Mr. Foucheaux.
21 And, again, it's nothing person; it was the screen.
22 Your colleague there knows, and he is even shorter
23 than you, and so I really have a problem when he is at
24 the chair.

25 I would like to mention that the Commission

1 has already issued a notice of inquiry in this case.
2 For those of you unfamiliar with our practice, the
3 Commission issues notices of inquiry when it wants to
4 provide all parties with an opportunity to comment on
5 legal or policy issues of general interest that may be
6 central to its decision.

7 On April 11th, the Commission issued a
8 notice of inquiry concerning the proposed treatment of
9 registered mail. I urge parties to review that NOI,
10 and I look forward to receiving your advice.

11 Does any participant wish to raise any other
12 issues for consideration this morning?

13 (No response.)

14 CHAIRMAN OMAS: And, again, I apologize for
15 you all having to listen to me go over 30 minutes
16 without stop, but these things have to be done, and
17 they have to be transcribed, and I do thank you all.
18 Thank you, Mr. Foucheaux, for understanding my
19 negligence in addressing you, and I thank all of you
20 here today. I will be issuing a procedural schedule
21 after receiving filings due on May 12, 2005. Again,
22 thank you, and this conference is adjourned.

23 (Whereupon, at 10:46 a.m. the prehearing
24 conference in the above-entitled matter was
25 concluded.)

REPORTER'S CERTIFICATE

DOCKET NO.: R2005-1
CASE TITLE: Postal Rate and Fee Changes
HEARING DATE: May 5, 2005
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Postal Rate Commission.

Date: May 5, 2005


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